IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.881 OF 2006

Shaunak H. Choksi ... Petitioner

Vs.

State of Maharashtra & Anr. ... Respondents

Mr. A.S. Khan for the petitioner.

Ms. M.H. Mhatre, A.P.P. for the State.

Mr. Prashant H. Chande i/b Mrs. H.H. Chande for respondent 2.

CORAM : SMT. RANJANA DESAI, J.

DATED : 12TH DECEMBER, 2006.

P.C. :-

1. The petitioner has challenged in this writ petition, order dated 9/1/2003 passed by the Metropolitan Magistrate, 23rd Court at Esplanade, Mumbai, issuing process against the petitioner under section 138 read with section 141 of the Negotiable Instruments Act (for short, “the said Act”) and the order dated 24/2/2006 passed by the Sessions Court at Bombay, rejecting the petitioner's revision application

challenging the said order.

2. I have heard the learned counsel appearing for the petitioner, at great length. Relying very heavily on the judgment of the Supreme Court in ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla and another, AIR 2005 SC 3512***, the learned counsel contended that there is nothing to indicate in the instant case that the petitioner was in charge of and responsible for the conduct of business of the company at the time when the offence was committed. He submitted that this averment is an essential requirement of section 138 of the said Act and has to be made in the complaint. He, therefore, submitted that the process issued against the petitioner must be quashed.

3. I have carefully perused the complaint. In the complaint, it is stated that accused 2 to 4 are in charge and responsible to accused 1 for the conduct of its business. Accused 1 is the company and the present petitioner is accused 3. He is the director of accused 1. It is also necessary to quote paragraph 7 of the complaint.

> *"7. By dishonouring the said cheque the Accused Nos.2, 3 and 4 the directors of Accused No.1 and each*

and every other director, manager, secretary and officer and other person who are in charge of and responsible to the Accused No.1 for the conduct of its business are deemed to have committed an offence under section 138 read with section 141 of the Negotiable Instrument Act, 1881. The Accused Nos.2, 3 and 4 are in charge of and responsible to the Accused No.1 for the conduct of its business, have signed various documents and were present at the time of Negotiations, dealing and transactions."

4. The averments of paragraph 7 of the complaint clearly indicate that it is the case of the complainant that the petitioner along with other accused has signed various documents. All of them were present at the time of negotiations, dealing and transaction. The learned counsel contended that as per the judgment of the Supreme Court in ***SMS Pharmaceuticals Limited (supra)***, the petitioner must be in charge of the affairs of the company at the time when the offence was committed. As to when exactly the offence was committed and whether at that time accused 3 was in charge of the affairs of the company can only be proved by adducing evidence. For that purpose, evidence will have to

be led. In the facts of this case, process cannot be quashed. In the circumstances, in my opinion, there is no substance in the petition. No interference is necessary. Petition is dismissed.

[SMT. RANJANA DESAI, J.]